

Remarks and Arguments:

Claims 1 to 16 remain for consideration in this application.

The present invention relates to a self-tanning composition comprising 45% to 65% by weight of aqueous extract of Japanese green tea, 5% to 15% by weight of dihydroxyacetone, 5% to 25% by weight of ethoxydiglycol and 3% to 10% by weight of PPG-12-Buteth-16 as an emollient. The composition is infused on a plurality of sheet-like substrates, and a plurality of such substrates is provided within a dispensing enclosure to form a self-tanning composition application dispensing set.

The substrates are infused by being placed in a vacuum chamber in which they can be agitated and tumbled, and the ingredients are added in a specific order at specific temperatures.

Advantages of the present invention defined by the claims include the use of an aqueous extract of Japanese green tea “increases the activity of the other ingredients which are found in the self-tanning composition formulation” (paragraph [0111] of the present application). The use of PPG-12-Buteth-16 as an emollient helps to “carry the active ingredients of the composition, and helps those active ingredients to penetrate into the skin faster” (paragraph [0114] of the present application).

Further, the present invention provides for multiple substrates infused with the self-tanning composition all enclosed within a dispensing enclosure to form a self-tanning composition application dispensing set. In this way, substrates can be removed from the dispensing enclosure one at a time and used as required.

Further, the provision of the dispensing set is facilitated by providing a method in which the self-tanning composition will not migrate away from the sheet-like substrate until such time as it is applied to the skin so as to transfer from the sheet-like substrate onto the skin of the user. The method includes the step of introducing 0.05% to 0.5% by weight of cosmetically acceptable and compatible minerals into a vacuum chamber at a temperature of 48°C to 52°C. Use of such minerals generates “electrolytes during the infusion process, so as to assure infusion and capture of the various other ingredients in the matrix of the sheet-like substrate” (paragraph [0116] of the present application).

The Examiner has rejected claims 1 to 16 under 35 U.S.C. § 103(a) as being unpatentable over of U.S. Patent 5,972,360 (Braun) in view of U.S. Patent 6,153,208 (McAtee et al.). Applicant respectfully traverses this rejection.

As mentioned above, the present invention provides multiple substrates infused with the self-tanning composition all enclosed within a dispensing enclosure to form a self-tanning composition application dispensing set. In this way, substrates can be removed from the dispensing enclosure one at a time and used as required.

In contrast, Braun specifically teaches the use of a towelette which “denotes the well known packet containing a towel cloth impregnated with a liquid and enclosed by a leakproof container” (column 1, lines 50 to 52). In this way, the “user merely opens the sachet, unfolds the tanning towelette, and wipes it over the body portion” (column 2, lines 1 to 3).

McAtee et al. teaches the use of a disposable cleansing article and a method of manufacture thereof. However, no where in McAtee et al. is there any teaching or suggestion of providing multiple cleaning articles within a dispensing enclosure to form a dispensing set.

Therefore, Applicant submits that there is no way that these references, taken along or in combination, can teach or suggest the use of a “dispensing set comprising of a plurality of sheet-like substrates and a dispensing enclosure” as recited in independent claim 1.

In the Office Action, the Examiner has agreed that Braun does not teach or suggest the use of aqueous extract of Japanese green tea. The Examiner has stated that McAtee et al. at column 45, lines 26 and 60 “green tea extract” is taught. It is respectfully drawn to the Examiner’s attention that at column 45, line 30 (not line 26), the patent teaches the use of “tea extracts”, not -- green tea extracts--, as one example of an artificial tanning agent. Applicant submits that there are a number of different types of tea extracts that could be used, for example Chinese herbal white tea extract. Therefore it is submitted that this passage in McAtee et al. does not teach the use of a green tea extract.

With respect to the recitation of “green tea extract” at column 45, line 60, this passage related to “nonlimiting examples of skin lightening actives” (column 45, lines 45 to 46). Therefore, Applicant submits that McAtee et al.’s teaching of the use of a green tea extract as a skin lightener actually teaches away from both the product of Braun and the present invention.

It should be noted that "It is improper to combine references where the references teach away from their combination." *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)."

Further, it is submitted then that neither products of Braun nor McAtee et al., taken alone or in combination can enjoy the synergistic effect of using a green tea extract in enhance the tanning properties of the present invention. As mentioned above, the present application specifically teaches that use of an aqueous extract of Japanese green tea "increases the activity of the other ingredients which are found in the self-tanning composition formulation" (paragraph [0111] of the present application). Accordingly, independent claims 1 and 11 cannot be suggested by Braun and/or McAtee et al., because significantly different results are obtained by the invention of claims 1 and 11.

In the Office Action, the Examiner has agreed that Braun does not teach or suggest the use of PPG-12-Buteth-16 as an emollient. Applicant submits that McAtee et al., which generally lists PPG-12 in a list of nonlimiting examples of suitable polypropylene glycols, also does not teach or suggest the use of PPG-12-Buteth-16 as an emollient. As mentioned above, the use of PPG-12-Buteth-16 as an emollient helps to "carry the active ingredients of the composition, and helps those active ingredients to penetrate into the skin faster" (paragraph [0114] of the present application).

Therefore, it is submitted that a combination of Braun and McAtee et al. cannot obviate the use of PPG-12-Buteth-16 as an emollient as claimed in present independent claims 1 and 11 since neither reference teaches or suggests it.

In the Office Action, the Examiner has agreed that Braun does not teach or suggest the present method of making a self-tanning sheet-like substrate as claimed in independent claim 11. The present method provides a sheet-like substrate in which the self-tanning composition will not migrate away from the sheet-like substrate until such time as it is applied to the skin so as to transfer from the sheet-like substrate onto the skin of the user. The method includes the step of introducing 0.05% to 0.5% by weight of cosmetically acceptable and compatible minerals into a vacuum chamber at a temperature of 48°C to 52°C. As mentioned above, use of such minerals generates "electrolytes during the infusion process, so as to assure infusion and capture of the various other ingredients in the matrix of the sheet-like substrate" (paragraph [0116] of the present application).

The Examiner has directed Applicant's attention to "all figures and columns 1-17 for the specific process conditions of the articles of manufacture" of McAtee et al. However, Applicant submits that none of the figures or the references passages teach or suggest the method as claimed in present claim 11. In particular, Applicant submits that McAtee et al. do not teach or suggest the use of 0.05% to 0.5% by weight of cosmetically acceptable and compatible minerals into a vacuum chamber at a temperature of 48°C to 52°C to assure infusion and capture of the various other ingredients in the matrix of the final product. Therefore, McAtee et al. cannot teach or suggest the step of "(j) introducing said minerals into said vacuum chamber while maintaining said temperature of step (i), and tumbling and agitating said plurality of sheet-like substrates for a period of 28 to 38 minutes" as claimed in present claim 11.

Further, since McAtee does not teach or suggest the use of a green tea extract for enhancing the tanning properties of the product (as discussed above), they cannot teach or suggest the step of "(f) introducing said aqueous extract of Japanese green tea into said vacuum chamber ... and tumbling and agitating said plurality of sheet-like substrates for a period of 20 to 25 minutes" as claimed in present claim 11.

Further, since McAtee does not teach or suggest the use of PPG-12-Buteth-16 (as discussed above), they cannot teach or suggest the step of "(l) premixing said ethoxydiglycol and said PPG-12-Buteth-16, and adding said dihydroxyacetone thereto, to form a homogenous mixture" as claimed in present claim 11.

It is well established that in order to establish a case of obviousness under 35 USC 103(a) that the references must teach all of the limitations of the claims (see MPEP2143).

Applicant submits that it is clear that a combination of Braun and McAtee cannot produce the invention defined in the present claims since all of the limitations of independent claims 1 and 11.

Dependent claims 2 to 10 and 12 to 16 depend either directly or indirectly from independent claims 1 and 11, and include all of the limitations of its respective parent claim. Therefore, the dependent claims are believed to be distinguishable over the cited references for at least the same reasons as those given to the respective parent claims.

Accordingly, Applicant respectfully requests a timely Notice of Allowance be issued in this case.

Respectfully submitted,



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